IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1064 OF 2005

Shivaji Eknath Kulkarni & anr. ... Appellants

V/s

Bapu Tukaram Nakil & ors. ... Respondents

Mr. M.R. Katikar for the appellants.

Mr. S.G. Surana for the respondents 1 & 5.

CORAM: P.V. KAKADE, J.

DATED: 17TH OCT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Islampur dated 23.6.2005 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, J.D., Shirala in R.C.S. No. 104 of 1997 and decreeing the suit reversing the finding of the Trial Court, who had also allowed the counter-claim filed by the plaintiffs wherein the plaintiffs were perpetually restrained from interfering and disturbing the possession of defendant Nos. 1 and 2 in suit property.

2. I have heard the learned counsel for both sides. Perused the record.

3. The plaintiffs filed the suit for perpetual injunction against the defendants. Plaintiffs had come with the case that they were in lawful possession of the suit property and defendants had obstructed the possession.

Defendants contested the suit inter-alia denying all the allgations made in the suit of the plaintiff and sought dismissal of the suit.

4. The Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had not proved their lawful possession as well as obstruction and hence the suit came to be dismissed. The counter-claim filed by the defendants also was allowed against the plaintiffs issuing perpetual injunction against them.

The appeal was carried to the District Court at Islampur. The learned Ad-hoc Addl. District Judge, after hearing both sides, came to the conclusion that

the plaintiffs had proved their lawful possession of the suit land on the date of the suit and, therefore, they were entitled for decree of perpetual injunction. It was also held that the defendants failed to prove the entries in the record of rights as to the statutory rights of the plaintiffs were bogus and defendants 1 and 2 were in possession of the suit land and, as such, the appeal came to be allowed. Hence the present appeal.

5. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this appeal. It is apparent from the evidence on record that the plaintiffs produced certified copy of the judgment of Sub-Divisional Officer, Walwa Division in Tenancy Appeal No. 13 of 1992 in respect of 1/2 share in land Survey No.30/1 dated 3.2.1993. It was an appeal preferred by one Shivaji Kulkarni - defendant No.1 in the suit. The Tenancy Court had come to the conclusion that the judgment of the Tahsildar as well as of Agricultural Lands Tribunal, Shirala, was correct and it was held that tenant had become statutory purchaser of the land as on the tillers' day and the process of fixing purchase price was carried out. On the other hand, there was nothing on record to show that the said judgment and order of the process of fixing purchase

price of the suit land in favour of the tenant or in the names of the successors were set aside at any time and, therefore, those were good in law. It was also not noted by the lower appellate Court that there was nothing on record to show that the revision against the Tenancy Court finding was allowed and order of the S.D.O. and that of Tahsildar Shirala was set aside at any time. There is no dispute regarding the entry in the record of rights of the plaintiffs' predecessors as protected tenancy of the said land and it is also not in dispute that the certificate under Sec.32-M of the B.T. & A.L. Act was issued in favour of the respondents and, as such, the provision under Sec.25A of the B.T. & A.L. Act had no application in the matter and thus appeal came to be allowed.

6. I do not find any fault in the reasoning adopted by the lower appellate Court which is seen to be based on proper appreciation of the available evidence and, as such, I do not intend to interfere in the said matter and dismiss the appeal. Consequently, Civil Application No. 1580 of 2005 also stands dismissed with no order as to costs.

7. At this stage, the learned counsel for the

appellants sought stay of the order. However, as can be seen from the record, the lower appellate Court had issued order of perpetual injunction against the appellants-defendants and, therefore, there cannot be stay against the said order. In view of this position, the plea for stay stands rejected.

C. c. expedited.

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